

August 26, 1969

Dear Mr. [redacted] p.

This is in reply to your letter of August 4, 1969, with regard to the petition for redetermination filed on behalf of your client [redacted]. Since you were unable to appear at the hearing scheduled on the matter, you request that we make our recommendation on the basis of the facts and information in our possession.

The item being protested is the inclusion of insurance and license fees in the taxable measure of rental receipts.

We understand that petitioner is the lessor of automobiles for which a monthly lump-sum charge is made to its lessees. From the total rental receipts, petitioner deducts a certain amount which it enters to separate accounts in its records designated as a reserve for insurance and license. The net amount of the rental receipts are reported for sales tax purposes. The auditor has included the amounts designated reserve for insurance and license in the taxable measure of rental receipts.

It is your contention that the tax should not apply to the insurance and license fees included as a part of the total monthly amount charged to the lessee for the lease of the automobile.

We will discuss the protested items separately.

1. License Fees:

Section 6006 of the Revenue and Taxation Code provides in part that sale means and includes "Any lease of tangible personal property in any manner or by any means whatsoever for a consideration."

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Section 6011 of the Code provides, in pertinent part, that "sales price" means the total amount for which tangible personal property is sold or leased or rented without deduction on account of the cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

Under the terms of the lease agreement, a copy of which was attached to the audit working papers, payment of the license fees are the primary obligation of the lessor. Paragraph (2) of that agreement provides that the lessor shall "register each leased vehicle in its name, obtain license permits therefor, and pay required taxes thereon." Paragraph (3)(b), however, provides that the lessor shall be reimbursed by the lessee for such license fees and taxes.

In the petition it is stated that the reimbursement for the license fees are included in the total monthly payment figure, and according to the audit workpapers, an amount is segregated in petitioner's records from each monthly rental payment as applicable to reimbursement for license fees.

Section 6011(h) of the Code provides that, "sales price" does not include, "The amount of any motor vehicle fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle."

The license fees involved are imposed by and paid to the State of California and are included in the sales (lease) price of the vehicles. It is our opinion that the exclusionary provisions of 6011(h) are applicable to the amounts paid by the lessor on account of the vehicle fees and taxes imposed by the State of California and the reimbursement of those fees and taxes from the rental receipts paid by the lessee does not constitute taxable rental payments.

2. Insurance:

By letter rulings, the board consistently has held that charges for insurance under a lease contract, the procurement of which is an obligation of the lessee, for the lessee's benefit and under which the lessee has an option in selecting the insurer, are excludible from rental receipts provided such charges are separately stated. (Cal. Tax Serv. Anno. Nos. 1536.10, 1536.12, 1536.15, and 1536.16.)

Subparagraph (3)(g) of the lease agreement expressly provides that procurement of insurance is the obligation of the

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lessee who must, "Procure, pay for and maintain public liability, property damage and other insurance..." The insurance is for the benefit of the lessee who agrees under (3)(f) to "Indemnify and hold lessor harmless from all damage to said vehicles and from and against all claims or causes of action...which may arise out of or be caused by the use of said vehicles by lessee..." The agreement further provides that the insurer may be selected by lessee. The only condition being the acceptability of the insurer by the lessor.

Under the above lease agreement provisions, the test of excludibility of the insurance payments from the tax is met with the exception of the requirement of separately stated charges.

In the instant case the lessee has elected to procure the insurance through the lessor. According to the lease proposal, a copy of which also is attached to the audit working papers, accepted by lessee and incorporated by reference into the lease agreement, the rental payments are a lump-sum monthly amount. The charges for the insurance are included but are not separately stated as required by board rulings to afford excludibility from the tax.

In view of the above, the amounts attributable to insurance and deducted from the rental receipts by the lessor, Rainier Leasing Corporation, constitute taxable receipts includible in the measure of rental payments subject to the tax.

It will be our recommendation that:

1. The license fees be deleted from the determination.
2. No adjustment be made with respect to the insurance charges included in the determination.

You will be notified of the action taken.

Very truly yours,

T. P. Putnam
Tax Counsel

BY _____
Joseph Manarolla

bc: Out-of-State - Dist. Admin.

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